IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO.341 OF 2007
WITH
CIVIL APPLICATION NO.680 OF 2007

Sharad Ramchandra Bhave & Ors. ..Appellants.
Vs.
Madhav Bhalchandra Bhave & Ors. ..Respondents.

Mr.S.M.Oak i/b Ms.Nayana Thatte, advs. for the Appellants.
Ms.Jyoti Chavan, adv. for the Respondent No.7.

CORAM : J.H.BHATIA, J.
DATE : SEPTEMBER 21, 2007.

P.C.:

1. Heard the learned counsel for the Parties.

2. The respondent no.1 is the original plaintiff and the appellants are the original defendant nos.1 to 4. The plaintiff filed suit for partition of the joint family property. It was his case that one Babaji had two sons namely, Trimbak and Ganesh. Trimbak had two sons Ramchandra and Narayan. Original defendant nos.1 to 4 are descendants of Ramchandra and defendant nos.5 to 10 are the descendants of Narayan. Ganesh had a son namely Dattaram, who died leaving behind one son Bhalchandra and two daughters Shanta and Shubhda, who are the defendant nos.2 and 11 respectively. Bhalchandra died leaving behind his wife Sudha, who was original plaintiff no.1 and son Madhav, who is original

plaintiff no.2. Sudha died during the pendency of the suit. She appointed Shubhda as guardian of the plaintiff Madhav as Madhav is mentally unfit. The plaintiff contended that suit properties are the ancestral property coming down from his great grandfather Babaji. The suit was contested only by the defendant nos.1,2 and 5. Other defendants did not file any written statement. Defendant nos.1, 2 and 5 in their written statement disputed the genealogy and also the fact that the suit property is an ancestral property of plaintiffs and defendants. According to them, the plaintiffs are not the descendants of Babaji. It is contended that Regular Civil Suit No.39 of 1965 was filed by Ramchandra and Narayan for partition of the joint family property and their suit was decreed and the partition had taken place.

3. On behalf of the plaintiff, defendant no.8 Vasant, who is son of Narayan was examined as witness and he proved the genealogy and established that the plaintiff Madhav is great grandson of Ganesh. He also proved that Ganesh and Trimbak were sons of Babaji. He himself is a son of Narayan and grandson of Trimbak. Defendant Nos.1,2 and 5 did not enter into witness box to depose about the facts. Relying on the testimony of P.W.1 Vasant, who is one of the defendants and brother of defendant nos.5,6,7,9 and 10, the trial Court came

to conclusion that the plaintiff is entitled to get share in the property. The trial Court also held that the property shall be divided equally in two branches of Trimbak and Ganesh and the plaintiff shall take half share in the property as descendant of Ganesh while the defendant nos.1 to 10 shall take half share in the property as descendants of Trimbak. Accordingly, the suit was decreed.

4. The judgment and decree passed by the trial Court was challenged in Regular Civil Appeal No.106 of 2003 by original defendant nos.1,2 and 4 only. The appeal came to be dismissed. They have preferred the second appeal before this Court. After hearing the counsel for both the parties, I find no question of law involved in the present matter. Even though the defendants/appellants challenged the right of the plaintiff as descendant of Babaji, they did not lead any evidence and infact, one of the defendants, namely Vasant son of Narayan, supported the claim of the plaintiff. As no substantial question of law is involved and the learned counsel for the appellant could not point out any fault in the judgment and decree passed by the Courts below, I find that the appeal can not be admitted.

5. The learned counsel for the appellant however,

pointed out that defendant no.11 Shanta and defendant no.12 Shubhda are sisters of Bhalchandra, who was father of the plaintiff and they are also having share in this property. The learned counsel for the plaintiff/respondent makes a statement that there is no dispute among the plaintiff and his paternal aunts Shanta and Shubhda and in fact, Shubhda has been appointed as guardian of Madhav. She makes a statement that in case the defendant nos.11 and 12 claim share, they will be entitled to get share from half share, which is being allotted to the plaintiff as descendant of the deceased Ganesh. In view of this statement, which is binding on the plaintiff, I find no substance in the appeal.

6. In the result, appeal stands dismissed.

7. In view of the fact that appeal itself has been dismissed, civil application does not survive and stands disposed off accordingly.

[J.H.BHATIA, J.]